IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. : 58/2001

Reserved on: 23.4.2007

Date of decision : May 16, 2007

Surinder Kumar **…Petitioner.**

Versus

Director General, C.R.P.F. & another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes*

For the petitioners : **Mr. Dushyant Dadwal, Advocate.**

For the respondents : **Mr. Ravinder Thakur, Advocate.**

Rajiv Sharma, J. (Oral)

This writ petition is filed primarily against the orders dated 11.8.1996, 14.12.1999, 1.2.2000 and 17.7.2000 issued by the respondents.

The brief facts necessary for adjudication of this petition are that the petitioner was recruited in the Central Reserve Police Force on 12.9.1971 at Palampur as Sepoy/Constable and was subsequently sent for training at Group Centre, Hydrabad where he was imparted necessary training for a period of six months. The petitioner was served with memorandum dated 26th August, 1992. The petitioner had filed reply to the memorandum on 7.9.1992. The competent authority, not satisfied with the reply filed by the petitioner, appointed Inquiry Officer vide office order dated 22nd September, 1992. The Inquiry Officer submitted the inquiry report (Annexure P-4) on March 16, 1993 to the Commandant. The Commandant supplied the copy of the inquiry report to the petitioner vide

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

letter dated 17.4.1993. The Commandant vide letter dated 29th April, 1993 has imposed the following penalty:

> **"I impose upon him the penalty of reduction in rank from L/NK-Dvr to Constable (Driver) for a period of two years from the date of receipt of this order. He will get his seniority in the rank of L/NK-Dvr only from the date of his re-promotion to the rank of L/NK-Dvr on completion of reduction period of two years. The service rendered by him prior to his attaining the age of 18 years will be treated as Boys service and it will not be counted as qualifying service for the purpose of pension etc."**

The petitioner after the imposition of the penalty on 29th April, 1993 started discharging his duties but abruptly, he was served with a show cause notice on 1st August, 1996 calling upon him to show cause within ten days as to why punishment of removal or dismissal from service should not be inflicted upon him. The petitioner filed detailed reply to the show cause notice on 17th August, 1996. The petitioner was again served with a notice on 14th December, 1999 whereby he was granted an opportunity to submit representation against the award of proposed punishment within a period of 15 days. The petitioner filed reply to the show cause notice on 30.12.1999. Ultimately, vide office order 1st January, 2000 the penalty of removal from service was imposed upon the petitioner. The copy of the same has been placed by the petitioner on record vide Annexure P-10. Feeling aggrieved by the order dated 1st January, 2000, the petitioner preferred the appeal to the Inspector General, Central Reserve Police Force, which was rejected on 17th July, 2000 vide Annexure P-13.

Mr. Dushyant Dadwal, Advocate appearing on behalf of petitioner has submitted that once the disciplinary proceedings had culminated into order dated 29.4.1993 whereby the penalty of reduction in rank from Lance Naik Driver to Constable Driver for a period of two years has been imposed, the same could not be substituted by removal from service on 1.1.2000. Mr. Dadwal has further elaborated his submissions by stating that if any order has to be revised as per Rule 29 (d) of the Central Reserve Force Rule, 1955, the same has to be done within a reasonable period. Mr. Dadwal then argued that the penalty of removal inflicted upon the petitioner is disproportionate and the principles of natural justice have also been violated at the time of imposition of penalty of removal as well as the appellate order is not a speaking order.

Mr. Ravinder Thakur, Central Government Counsel has supported the order passed on 1.1.2000 and the appellate order dated 17.7.2000.

I have heard the parties and perused the record.

The disciplinary proceedings have been initiated against the petitioner on the basis of memorandum dated 26.8.1992 which have culminated into office order dated 29.4.1993. It will be apt to reproduce the operative portion of order dated 29th April, 1993 as under:

> **"I take a lenient view keeping in view his length of service and by virtue of powers vested upon me U/S 11(1) of the CRPF Act, 1949 read with Rule 27 (a) of CRPF Rules, 1955 I impose upon him the penalty of reduction in rank from L/NK-Dvr to Constable (Driver) for a period of two years from the date of receipt of this order. He will get his seniority in the rank of L/NK-Dvr only from the date of his re-promotion to the rank of L/NK-Dvr on completion of reduction period of two years. The service rendered by him prior to his attaining the age of 18**

years will be treated as Boy's service and it will not be counted as qualifying service for the purpose of pension etc."

The Commandant has taken a very reasonable view on the basis of the inquiry report and the reply(s) filed by the petitioner and on that basis has imposed penalty of reduction in rank from Lance Naik Driver to Constable Driver for a period of two years. The Commandant has also ordered on 29th April, 1993 that the services rendered by the petitioner prior to the age of 18 years will be treated as 'boy's service' and the same shall not be counted as qualifying service for the purpose of pension etc. The petitioner has been recruited in the Central Reserve Police Force on 12.9.1971 and this order dated 29th April, 1993 has been passed after the petitioner has served the Central Reserve Police Force for 22 long years. The only misconduct imputed to the petitioner as per memorandum dated 26th August, 1992 was that the date of birth of the petitioner in the school leaving certificate was recorded as 18.9.1955 which was tempered by him to read as 18.9.1952. The gist of the imputation against the petitioner was that at the relevant time, he was only 16 years old whereas the minimum age for enlistment was 18 years.

This Court is of the opinion that on the basis of the inquiry report, the Commandant has imposed the penalty upon the petitioner commensurate to the alleged misconduct. The penalty of reduction in rank from Lance Naik Driver to Constable Driver/Sepoy was a major penalty. The Commandant has also directed the services rendered by the petitioner prior to his attaining the age of 18 years to be treated as boy's service and the same was not countable as qualifying service for the purpose of pension etc. The matter should have been permitted to attain finality at that stage only.

The Deputy Inspector General of Police, Central Reserve Police Force has called upon the petitioner again to submit his reply within ten days on 1st August, 1996 on the same facts as mentioned in the memorandum dated 26.8.1992. The petitioner had given detailed reply to the same but despite the averments contained in the reply filed by the petitioner to the show cause notice, a fresh show cause notice dated 14.12.1999 was issued to the petitioner. The basis for issuing show cause notice was that during the administrative review in respect of the petitioner, it was found that the penalty imposed was not in conformity with the provisions contained in Government of India Instruction No.2 below Rule 11 of the CCS(CCA) Rules, 1965 read with G.O. 49/93 and accordingly Commandant 69 Battalion was directed to submit his case for examination. This exercise has been undertaken by the Deputy Inspector General of Police, Central Reserve Police Force after six years of the passing of the earlier order whereby the petitioner was imposed the penalty of reduction in rank on 29th April, 1993. Consequently, the penalty of removal from service has been imposed upon the petitioner on 1.1.2000.

It is evident from the reading of office order 1.1.2000 that the reply filed by the petitioner has not been taken into consideration and following observations have been made:

> **"The denial of charges at this stage has no relevance as the charges levelled against him have already been proved during the course of enquiry. It is evident from D.E. proceedings that ample opportunity was given to him to defend his case and also copies of all documents provided to him. *Hence the submission of the individual in his reply to show cause notice is not acceptable.* *Regarding principles of natural justice, the***

***individual has committed a serious offence in a manner unbecoming of a Government servant*. The punishment of reduction in rank awarded by the disciplinary authority, Commandant-69 Bn CRPF is not in conformity with the GOI instructions cited above. I, therefore, in exercise of powers vested vide Rule 29 (d) of CRPF Rules -1955, hereby enhance the punishment of reduction in rank awarded to No.710581076 LNK (Dvr) (now HC/Dvr) Surender Kumar of 113 Bn CRPF by Commandant-69 Bn CRPF, to tht of 'REMOVAL FROM SERVICE' with effect from the date of receipt of this order by the individual. The punishment of reduction in rank from LNK(Dvr) to CT (Dvr) for a period of two years with office order No. P.VIII-8/92-69-Estt-II dated 29.04.93 to No. 710581076 LNK (Dvr) (now HC/Dvr) Surender Kumar is set aside."**

The non-consideration of reply filed by the petitioner while imposing the penalty of removal has seriously prejudiced him. The misconduct whosoever grave it may appear, but before imposing any penalty upon an employee, the principles of natural justice are to be complied with. The Deputy Inspector General of Police, Central Reserve Police Force has used the expression ***"Hence the submission of the individual in his reply to show cause notice is not acceptable. Regarding principle of natural justice, the individual has committed a heinous offence in a manner unbecoming of a Government servant."*** Thus, the Deputy Inspector General of Police, Central Reserve Police Force has pre-judged the entire issue and had already made up his mind to punish the petitioner without taking into consideration the reply furnished by him.

The second aspect which needs consideration as mentioned vide office order 1.1.2000 whether the Government of India Instruction No.2

below rule 11 of CCS (CCA) Rules, 1965 read with Government Order No. 49/93 can be invoked by the respondents having there own statutory rules for the Central Reserve Police Force Rules, 1955?

The detailed procedure has been provided for imposing penalties on the members of the Central Reserve Police Force as provided in Chapter-VI of the Central Police Force Rules, 1955 (hereinafter referred to as the Rules). Rule 27 of the Rules enumerates procedure for the award of punishment. The Central Reserve Police Force Rules, 1965 is a complete code by itself and it is not understandable why the Inspector General of Police, Central Reserve Police Force has invoked the instruction that too mentioned below Rule 11 of CCS (CCA) Rules, 1965. The Deputy Inspector General of Police, Central Reserve Police Force has invoked rule 29 (d) of the Rules while imposing the penalty of removal from service upon the petitioner. The Deputy Inspector General of Police, Central Reserve Police Force can call for records of award of any punishment and could confirm, enhance, modify or annual the same or make or direct further investigation, but in the present case what is to be seen whether this power can be invoked after a lapse of more than six years. The power of revision under Rule 29 is to be exercised within a reasonable period to avoid hardship to the members of the Central Reserve Police Force. In the case in hand, the penalty of reduction in the rank has been imposed upon the petitioner on 29.4.1993, but this order has been revised resulting in removal to the petitioner from the Force on 1.1.2000 after a lapse of more than six years.

As far as memorandum relied upon by the Deputy Inspector General of Police, Central Reserve Police Force is concerned, the same is couched in a very harsh language. It will be arbitrary exercise of powers if the only penalty which on the basis of memorandum can be imposed is

either removal or dismissal. The facts of each case are to be seen before taking assistance of instruction No.2 appended below rule 11 of the CCS (CCA)(Rules, 1965. Even though the Central Reserve Police Force Rules, 1955 being complete code even if some assistance is to be drawn from memorandum dated 29.4.1993, the same has to be viewed in a reasonable manner. In the present case the penalty of reduction in the rank has been imposed upon the petitioner vide memorandum dated 29.4.1993, but the same has been substituted on 1.1.2000 to removal from service. Considerable period i.e. six years has elapsed between the two orders i.e. 29th April, 1993 and 1.1.2000. Moreover the petitioner has been recruited on 12th September, 1971 and the first penalty was imposed upon him in the year 1993 after the petitioner has put in 20 years service and thereafter the penalty of removal from service has been imposed upon the petitioner when he had completed 28 years of service i.e. towards the fag end of his career. Nothing has come on record that the career of the petitioner was blemished except that the petitioner had given wrong date of birth to get recruitment at the earliest for which purpose the penalty of reduction in rank was sufficient as inflicted vide order dated 29th April, 1993. If the rigours of instruction 2 are permitted to be applied mechanically it will result in grave miscarriage of justice.

The appellate order is also not in conformity with law. It is settled law by now that while disposing of the appeal, the appellate authority has to pass a speaking order after taking into consideration the grounds taken in appeal.

In ***Union of India v. T.R. Verma A.I.R. 1957 S.C. 882*** the Hon'ble Supreme Court has held that :-

> **"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of**

adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

The expression 'reasonable opportunity' has been explained by the Hon'ble Supreme Court in ***M/s. Fedco (P) Ltd. and another v. S.N. Bilgrami and others AIR 1960 Supreme Court 415*** as under:-

"The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable. In the present case, a notice to show cause against the proposed order was given; it was stated in the notice that the ground on which the cancellation was proposed was that the licences had been obtained fraudulently; and later on a personal hearing was given. It must therefore be held that the requirement that an opportunity to be heard must be given was satisfied. What the petitioners' Counsel strenuously contends however is that though an opportunity was given that opportunity was not reasonable. In making this argument he had laid special stress on the fact that particulars of the fraud alleged were not given and an opportunity to inspect the papers though repeatedly asked for was not given. It is now necessary to consider all the circumstances in order to arrive at a conclusion whether the omission to given particulars of fraud and inspection of papers deprived the petitioners of a reasonable opportunity to be heard.

There can be no invariable standard for "reasonableness" in such matters except that the Court's

conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exit they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question."

It has been held in ***Ram Chandra Chaudhuri v. Secretary to Govt. of West Bengal and others AIR 1964 Calcutta 265*** that:-

"Point (3). Conscious as I am that a plea of mala fide rarely succeeds I find that in the present case, the circumstances attending the impugned order are glaring enough to substantiate the allegation.

It is commonplace to state that mala fides does not necessarily involve a malicious intention. It is enough if the aggrieved party establishes:

(i) that the authority making the impugned order did not apply its mind at all to the matter in question (Vide L.J.J. D'Souza v. State of Bombay, (1956) SCR 382 (387): (S) AIR 1956 SC 531 at p.534); or (ii) that the impugned order was made for a purpose or upon a ground other than what is mentioned in the face of the order of Puranlal Lakhanpal v. Union of India AIR 1958 SC 163 (172). These principles have been applied by the Supreme Court in a case of reversion of a Government servant in the case of

Sukhbans v. State of Punjab, AIR 1962 SC 1711, to which I shall have occasion to refer more fully hereafter.

In my opinion, the Petitioner before me has succeeded in establishing both."

The Hon'ble Supreme Court in ***State of Orissa v. Dr. (Miss) Binapani Dei and others AIR 1967 Supreme Court 1269*** has held that even an administrative order which involves civil consequences, has to be passed consistently with the rule of natural justice. Their Lordships of Hon'ble the Supreme Court have held as under:-

"It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order while involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right insetting aside the order of the State."

In ***M. Chinnappa Reddy v. State of Andhra Pradesh and others AIR 1969 Andhra Pradesh 234*** it has been held that :-

"The only contention raised by Shri P. Chennakesava Reddy, the learned counsel for the petitioner, is that the charge memo, served upon the petitioner indicates the proposed punishment of dismissal

from service. It is a gross violation of the procedure contemplated under the rules and is contrary to the provisions of Article 311 of the Constitution. The Sub-Collector had prejudged the issue and consequently, the whole proceeding is vitiated. In support of this contention, he relied upon the following decisions: S. Manickam v. Supdt. Of Police, Nilgiris, AIR 1964 Mad 375; Mohan Das v. Supdt. Of Police, Khammameth, 1967-1 Andh WR 156; and State of Andhra Pradesh v. R.H. Khan, 1967-2 Andh WR 121. Although this contention has not been raised anywhere before any of the tribunals, nor was it raised specifically in the petition, even then I allowed the learned advocate to raise that point because, in my opinion, that goes to the very root of the question. It is now fairly settled that at the initial stage when charges are framed and served upon the delinquent officer, the punishing authority or the inquiry office should not propose what punishment ultimately he is to be given. That is not the stage when any opinion can either be formed or expressed. It amounts to prejudging the issue, which is always likely to create misapprehension in the mind of the delinquent officer. It is only at the stage when after a proper enquiry the punishing authority forms an opinion that the accused officer has committed the offence that he could propose the punishment and ask the delinquent officer to explain as to why that punishment should not be imposed. At the initial stage, if the charge framed indicates the proposed punishment, it vitiates the proceedings. The abovesaid decisions clearly decides that point, and with respect, I follow those decisions."

The Hon'ble Supreme Court in a land mark judgment **A*.K. Kraipak and others v. Union of India and others AIR 1970 SC 150*** has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The Hon'ble Supreme Court has opined as under:-

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought (1) no one shall be a judge in his own cause (Nemo debet ess judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/-15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances

of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

In ***M.L. Gera v. The Chief Engineer, (D), Irrigation Works, Punjab & Chandigarh and others AIR 1973 Punjab & Haryana 287*** it was held that incorporating the proposed punishment in the notice itself is error in law and violates the principles of natural justice. The Hon'ble Judge has observed as under:

"After hearing the learned counsel for the parties, I find substance in both the contentions. The trend of letters exchanged in great haste between the Superintending Engineer and the Executive Engineer on one side and the petitioner on the other goes to show that both these officers were acting in concert and had decided to take action against the petitioner for what was considered to be misconduct on his part in the use of language in his talk with the Executive Engineer on telephone on 17th March, 1964. A charge of not taking interest in his duties was also leveled against the petitioner and he offered his explanation. In regard to the talk on telephone, the petitioner, according to the showing of respondent No.4, had stated that he should first be allowed to say whatever nonsense it was. It appears that both the Executive Engineer and the petitioner were in a bad temper while talking to each other on telephone. Respondent No.4 was personally involved in the matter and it was incorrect on the part of the Chief Engineer to have accepted the comments of this officer on the explanation of the petitioner. In the show-cause notice also, the Chief Engineer specifically stated that the punishment by way of stoppage of increment was proposed to be imposed. Rule 4 covers several kinds of

minor punishments and it was improper on the part of the punishing authority to have decided before the receipt of the explanation as to what punishment was going to be imposed. There may be cases where on a good cause being shown by way of explanation, a punishment of censure or warning or any other minor punishment would meet the ends of justice. The mention of the proposed punishment in the show-cause notice under Rule 8 was in the circumstances of the present case, an indication of predetermined mind which made the opportunity for explanation a farce."

The Hon'ble Supreme Court in ***The Managing Director, U.P. Warehousing Corporation and others versus Vijay Narayan Vajpayee A.I.R. 1980 Supreme Court 840*** has held that dismissal of the employee of U.P. Warehousing Corporation in total breach of natural justice was illegal. The Supreme Court has opined as under:-

"The appellant is a Corporation constituted under the Madhya Pradesh State Warehousing Corporation Act (28 of 1956), which was subsequently replaced by the Madhya Pradesh Act 58 of 1962. It is a statutory body wholly controlled and managed by the Government. Its status is analogous to that of the Corporations which were under consideration in Sukhdev Singh's case (ibid). The ratio of Sukhdev Singh's case, therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the statutory body, the employer could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the appellant-Corporation in exercise of

the powers conferred on it by the statute which created it. The appellants' power to dismiss the respondent from service was also derived from the statute. The Court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party No.1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the Opposite Party No.1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes placed only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing the respondent's explanation. The rules of natural justice in this case were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court."

The Hon'ble Supreme Court in ***S.L. Kapoor versus Jagmohan and Others (1980) 4 SCC 379*** has held that non-observance of natural justice is

itself a prejudice caused. Hon'ble Supreme Court has also laid down in this judgment that merely because the facts are admitted or are undisputable, it does not follow that natural justice need not be observed. Their Lordships of the Hon'ble Supreme Court have opined as under:-

> **"The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:**
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> **The distinction between justice being done and being seen to be done has seen emphasized in many cases . . . . . .**
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> **The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J.'s judgment in R. v. Home Secretary, ex. P. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".**
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> **It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland Donaldson, J., said that the court, in deciding whether to**

interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In R. v. Thames Magistrates' Court, ex. P. Polemis, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

> **It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at page 1375).**

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not

necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."

The Hon'ble Supreme Court in ***D.K. Yadav versus J.M.A. Industries Ltd. (1993) 3 SCC 259*** has held that action of the authority should be impartial and should be free from even appearance of unfairness, unreasonableness and arbitrariness. Their Lordships of Hon'ble Supreme Court have held that the procedure prescribed for depriving a person of livelihood will be liable to be tested on the anvil of Article 14. Their Lordships of Supreme Court have opined as under on the principle of reasonable opportunity to be afforded to an employee:-

"The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill v.

Chief Election Commissioner the Constitutional bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation very thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country … they include … rights capable of being enforced or redressed in a civil action …. In State of Orissa v. (Miss) Binapani Dei this Court held that even an administrative order which involvers civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

In State of W.B. v. Anwar Ali Sarkar per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India another Bench of seven Judges held that the substantive procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affect the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take

punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity or person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law

must be in conformity with the minimum fairness and procedural justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employee was set aside.

In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the

appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No.13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice."

The Hon'ble Supreme Court has further expanded the principles of natural justice in ***Dr. Rash Lal Yadav vesus State of Bihar and Others (1994) 5 SCC 267*** as under:-

"The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge I his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be

controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indication to the contrary as in the present case. This Court in A.K. Kraipak v. Union of India after referring to the observations in State of Orissa v. Dr. (Miss) Binapani Dei observed as under: (SCC p.272, para 20)

> **"The aim of the rules of natural justice is to ensure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."**

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

The Hon'ble Supreme Court has further elucidated the principles of natural justice in ***Kumaon Mandal Vikas Nigam Ltd. versus Girja Shankar Pant and Others (2001) 1 SCC 182*** as under:-

> **"Since the decision of this Court in Kraipak case (A.K. Kraipak v. Union of India) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent**

miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances – who then is a reasonable man – the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even I n the millennium year. As a matter of fact this Court in the case of Keshav Mills Co. Ltd. V. Union of India upon reliance on the attributes of the doctrine as above-stated as below: (SCC p. 387, para 8)

> ***"8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in H.K. (on infant), In re. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case as 'insusceptible of exact***

definition but what a reasonable man would regard as a fair procedure in particular circumstances'. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. observed in Russell v. Duke of Norfolk:

> ***'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rule under which the tribunal is acting, the subject-matter that is being dealt with and so forth.' "***

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action.

While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the

findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra.

It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste; this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of Sayeedur Rehman v. State of Bihar seem to be rather apposite. This Court observed: (SCC p. 338, para 11)

> ***"The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated 22-4-1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."***

The Hon'ble Supreme Court in ***Canara Bank and Others versus Debasis Das and Others (2003) 4 SCC 557*** has explained the concept, meaning, object, scope and applicability of the natural justice. Their Lordships have explained the principles in the following manner: -

> **"Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideas and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.**
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> **The expression "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.**
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> **The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this**

principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420)

> ***"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not ear?' "***

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (Macq at p.8), Lord Cranworth defined it as "universal justice". In James Dunber Smith v. Her Majesty the Queen (AC at p.623) Sir Robort P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in Arthur John Spackman v. Plumstead District Board of Works (AC at p.240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In Vionet v. Barrett (LJRD at p.41), Lord Esher, M.R. devined natural justice as "the natural sense of what is right and wrong". While, however, deciding Hookings v. Smethwick Local Borad of Health Lord Esher, M.R. instead of using the definition given earlier by him in Vionet case chose to define natural justice as "fundamental justice". In Ridge v. Baldwin (QB at p.578), Harman, L.J., in the Court of Appeal countered natural justice with "fair play inaction", a phrase favoured by Bhagwati, J. in Maneka

Gandhi v. Union of India. In H.K. (An Infant), Re (QB at p.630), Lord Parker, C.J. preferred to describe natural justice as "a duty to act fairly". In Fairmount investments Ltd. v. Secy. Of State for Environment Lord Russell of Killowen somewhat picturesquely described natural justice as "a fail crack of the whip" while Geoffrey Lane, L.J. in R. v. Secy. of State for Home Affairs, ex p Hosenball preferred the homely phrase "common fairness".

How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as stated in Earl of Derby's case that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria cause, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said

what is right, will not have been what is right" [see Boswel's case (Co Rep at p.52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

In the following judgments, Hon'ble Supreme court has laid down the parameters within which the Courts can interfere with the punishment/penalty imposed by the disciplinary authority.

Hon'ble Supreme Court in ***Chandra Vilash Rai Vs. State of Bihar and others (2003) 11 SCC 741*** while taking into consideration the long service of more than 20 years rendered by the delinquent have altered the punishment to one of the pre-mature retirement. Hon'ble Supreme Court has held as under:

"Having examined the charges alleged and proved against the two delinquents, we cannot but observe that the charges are serious, more particularly, since they relate to affairs of a cooperative bank. But at the same time, it cannot be disputed that these delinquents have rendered services in the Society for more than 20 years. It also transpires that the so-called delinquency had not been committed on their own but at the behest of the Board of Directors, though in law such action would not exonerate the delinquents from the liabilities which they would incur for such illegalities and irregularities. In the aforesaid premises, we think it appropriate that ends of justice will be met if we alter the punishment of dismissal to one of

premature retirement, as provided in the Staff Regulations of the Bank, which appear to have been framed by the Board in its resolution dated 12.3.1985 which punishment also is a major punishment and we accordingly so direct. If the delinquents are entitled to any retirement benefits on the basis of such premature retirement, those may be given to them. These appeals are disposed of accordingly."

In the present case the petitioner at the time of reduction of rank from Lance Naik Driver to Constable (Driver) vide order dated 29th April, 1993 had put in more than 20 years of service and at the time when the penalty of reduction of rank was substituted to removal from service, he had put in 28 years of service.

The Hon'ble Supreme Court has held in ***Dev Singh V. Punjab Tourism Development Corporation and another (2003) 8 SCC 9*** that if the punishment imposed by disciplinary authority shocks the judicial conscience, court can mould the relief. The Hon'ble Supreme Court has held as under:

"A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above noted judgments of this

Court, if the punishment imposed by the disciplinary authority' is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

Applying the said principles laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent Corporation for nearly 20 years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge-sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future, whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion that a deterrent punishment was called for, forgetting for a moment that no such allegation of misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file, importance or sensitiveness of which

was not mentioned in the charge-sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service Bye-laws applicable to the Corporation under Service Bye-law 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said Bye-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable up to the date of the dismissal order."

Hon'ble Supreme Court has held in ***Director General, RPF and others Vs. Ch. Sai Babu (2004) 4 SCC 331*** as under:

Normally, the punishment imposed by a disciplinary authority should be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.

In ***Ram Saran Vs. IG of Police CRPF and others (2006) 2 SCC 541,*** Hon'ble Supreme Court has held in similar cases that where an employee has sought appointment in CRPF by furnishing a false certificate, he was to be dealt with sternly. In Ram Saran's case the Commandant (SG), the disciplinary authority after considering the report was of the view that the charged official deserves stringent punishment. But keeping in view his long service of 28 years with good grading for the past ten years, he was inclined to take a lenient view and imposed penalty of reduction to the rank of NK (GD) for a period of one year from September 10, 1997 to September 9, 1998 without cumulative effect. It appears from para 3 of the judgment that thereafter the matter was placed before the Deputy Inspector General of Police, Central Reserve Police Force, Nagpur, who vide order dated 16.1.1998 differed from the proposed punishment and directed dismissal from service.

In Ram Saran's case, the penalty was inflicted of reduction to the rank of NK (GD) for a period of one year from September 10, 1997 to September 9, 1998 and immediately thereafter within a period of one year

the order was revised by the Deputy Inspector General of Police. Thus there was no considerable delay in the imposition of penalty by the Commandant and its revision. The question of violation of principles of natural justice was also not led before the Hon'ble Supreme Court as is in the present case.

In the present case the punishment of reduction from the rank of Lance Naik (Driver) to the Constable (Driver) was imposed on 29.4.1993, but the order substituting this punishment has been passed on 1.1.2000. The decision, if any, by the revising authority was to be taken within a reasonable period of one year. Moreover, in the present case the Deputy Inspector General of Police, Central Reserve Police Force has not taken into consideration the reply furnished by him to the show cause notice dated 14.12.1999. If decision has been taken under Rule 29 (d) within a period of one year and there was no violation of the principles of natural justice, the present case was squarely covered by the ratio of Ram Saran's case.

In a recent judgment, the Hon'ble Supreme Court in ***Management of Coimbatore District Central Cooperative Bank Vs. Secretary, Coimbatore District Central Cooperative Bank Employees Association & another 2007 (6) Scale 45*** with regard to doctrine of proportionality has held as under:

> **"So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived at in our legal system but has come to stay. With the rapid growth of Administrative Law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by Courts. If an action taken by any authority is**

contrary to law, improper, unreasonable, irrational or otherwise unreasonable, a Court of Law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the 'doctrine of proportionality'

'Proportionality' is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise -the elaboration of a rule of permissible priorities.

de Smith states that 'proportionality' involves 'balancing test' and 'necessity test'. Whereas the former ('balancing test') permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter ('necessity test') requires infringement of human rights to the least restrictive alternative. ['Judicial Review of Administrative Action '; (1995); pp. 601-605; para 13.085; see also Wade & Forsyth; 'Administrative Law '; (2005); p.366].

In Halsbury's Laws of England, (4th edn.); Reissue, Vol.1(1); pp.144-45; para 78, it is stated;

"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative

bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

The doctrine has its genesis in the field of Administrative Law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no 'pick and choose', selective applicability of Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a 'sledge-hammer to crack a nut'. As has been said many a time; "Where paring knife suffices, battle axe is precluded".

In the celebrated decision of Council of Civil Service Union (CCSU) v. Minister for Civil Service, (1984) 3 All ER 935: (1984) 3 WLR 1174: (1985) AC 374 (HL), Lord Diplock proclaimed;

"Judicial review as I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review.

The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality '... " (emphasis supplied)

CCSU has been reiterated by English Courts in several subsequent cases. We do not think it necessary to refer to all those cases.

So far as our legal system is concerned, the doctrine is well-settled. Even prior to CCSU; this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a Court to interfere with such penalty in appropriate cases.

In Hind Construction Co. v. Workmen, (1965) 2 SCR 85: AIR 1965 SC 917, some workers remained absent from duty treating a particular day as holiday. They were dismissed from service. The Industrial Tribunal set aside the action. This Court held that the absence could have been treated as leave without pay. The workmen might have been warned and fined. (But) "It is impossible to think that any reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner. " The Court concluded that the punishment imposed on the workmen was not only severe and out of proportion to the fault, but one which, in our

judgment, no reasonable employer would have imposed. (emphasis supplied)

In Indian Chamber of Commerce v. Workmen, (1972) 1 SCC 40 : AIR 1972 SC 763, the allegation against the employee of the Federation was that he issued legal notices to the Federation and to the International Chamber of Commerce which brought discredit to the Federation –the employer. Domestic inquiry was held against the employee and his services were terminated. The punishment was held to be disproportionate to the misconduct alleged arid established. This Court observed that "the Federation had made mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation.

In Ranjit Thakur referred to earlier, an army officer did not obey the lawful command of his superior officer by not eating food offered to him .Court Martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment.

Applying the doctrine of proportionality and following CCSU; Venkatachaliah, J. (as His Lordship then was) observed:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of

bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial if the decision of the court even as to sentence is an outrageous defence logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. " (Emphasis supplied)

From the above decisions, it is clear that our legal system also has accepted doctrine of proportionality. The question however, is whether in the facts and circumstances of the present case, the High Court was justified in invoking and applying the doctrine of proportionality .In our judgment the answer must be in the negative. Normal when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, it cannot be interfered with unless such finding is based on 'no evidence or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding. In the present case, four charges had been levelled against the workmen. An inquiry was instituted and findings recorded that all the four charges were proved. The Labour Court considered .the grievances of the workmen, negatived all the contentions raised by them, held the inquiry to be in consonance with principles of natural justice and findings supported evidence. Keeping in view the charges proved, the Labour Court, in our opinion rightly held that the punishment imposed on workmen could not be said to be harsh so as to interfere with it."

The Hon'ble Supreme Court has laid down in ***Purshotam Lal Vs. Diwan Chaman Lal AIR 1961 SC 1371*** that even if no period is prescribed while exercising the powers of revision by the competent authority, but the same has to be done within a reasonable period.

Similarly, the Hon'ble Supreme Court has held in ***State of Gujarat Vs. Patel Raghav Natha AIR 1969 SC 1279*** that the powers contemplated by section 211 of the Bombay Land Revenue Code must be exercised within a reasonable time.

In ***Bhagwanji Bawanji Patel Vs. State AIR 1971 Gujaraj 61*** it has been held that in view of the period of limitation prescribed in Article 14 of the first Schedule of the Indian Limitation Act, 1908, which is equivalent to Article 100 of the Limitation Act of 1963, the maximum period which can be considered reasonable for taking an action to revise the order concerned would be one year.

In ***S.B. Gurbaksh Singh V. Union of India and others (1976) 37 STC 425*** it has been held that for exercise of the suo motu power of revision also, the revisional authority has to initiate the proceedings within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case.

Thus, it is settled law by now that while exercising the powers of revision, one year is reasonable period.

In view of the pronouncement of law made by the Hon'ble Supreme Court with regard to applicability of doctrine of proportionality, this court has to consider the entire facts and circumstances of the case to come to a conclusion where the penalty of removal imposed upon the petitioner is disproportionate to the misconduct. The petitioner was recruited in the year 1971. The memorandum was issued to him on 26.8.1992.

Admittedly the Inquiry Officer has held in his report that the charge against the petitioner was proved but the disciplinary authority while taking a very lenient view has imposed the penalty of reduction of rank from Lance Naik (Driver) to Constable (Driver) upon the petitioner in the month of April, 1993. The petitioner thereafter had started discharging the duties in the lower rank and it was only in the year 1996 that the first notice was issued seeking his explanation. The petitioner has submitted his explaination. The petitioner was again called upon by way of another memorandum dated 14th December, 1999 to furnish the reply. The petitioner had submitted the reply. The penalty of reduction from the rank of Lance Naik (Driver) to Constable (Driver) was substituted by the Deputy Inspector General of Police, Central Reserve Police Force to removal from service. The Deputy Inspector General of Police, Central Reserve Police Force has not taken consideration the reply furnished by the petitioner to show cause notice which seriously prejudiced the petitioner. The earlier order of reduction in rank from Lance Naik (Driver) to Constable (Driver) was issued on 29.4.1993 and the penalty has been substituted after a lapse of more than six years. Since the petitioner has put in 28 years of service at the time of the penalty of removal was inflicted upon him and nothing adverse has come on the record against the petitioner except the first demeanour committed at the time of initial recruitment in the year 1971.

The upshot of the above discussion is that:

(i) the order dated 29.4.1993 could not be revised after a period of more than six years resulting in the substitution of penalty in reduction in rank to removal from service.

(ii) that while revising the order on 1.1.2000 the principle of natural justice have been violated particularly when the reply filed by the petitioner to the show cause notice has

not been taken into consideration by making these observations:

"**Hence the submission of the individual in his reply to show cause notice is not acceptable. Regarding principle of natural justice, the individual has committed a serious offence in a manner unbecoming of a Government servant"**

(iii) the penalty of removal imposed upon the petitioner from service by substituting the earlier punishment of reduction in rank is disproportionate and is liable to be struck down on this count also.

Accordingly this court is convinced that the penalty imposed upon the petitioner vide Annexure P-5 dated 29.4.1993 was proportionate to the misconduct. The penalty of removal from service imposed upon the petitioner vide Annexure P-10 dated 1.1.2000 is liable to be quashed and set aside being disproportionate.

Accordingly the writ petition is allowed. The office order dated 1.1.2000 Annexure P-10 is quashed and set aside and order dated 29th April, 1993 Annexure P-5 is restored. The petitioner is held entitled to all the consequential benefits i.e. arrears of salary and retiral benefits. The costs are quantified at Rs. 10,000/-.

(Rajiv Sharma), Judge

May 16, 2007
Awasthi